



UNITED STATES PATENT AND TRADEMARK OFFICE

mk
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,009	01/07/2002	James E. Doherty	ITWO:0009	2596

7590 02/11/2004
Patrick S. Yoder
Fletcher, Yoder & Van Someren
P.O. Box 692289
Houston, TX 77269-2289

EXAMINER

KERNS, KEVIN P

ART UNIT	PAPER NUMBER
----------	--------------

1725

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/041,009	Applicant(s) DOHERTY, JAMES E.	
	Examiner Kevin P. Kerns	Art Unit 1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 9-15 and 27-33 is/are allowed.
- 6) ☒ Claim(s) 5, 6, 8, 16-19, 24-26 and 34-36 is/are rejected.
- 7) ☒ Claim(s) 7 and 20-23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to amended claim 19, it is unclear what is meant by "substantially relative to" an axis. Does the applicant mean "substantially straight relative to" an axis?

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 24-26 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Colangelo, Jr. (US 6,025,574).

Colangelo, Jr. discloses a MIG welding assembly having the combination of an electric power source, a wire feeder, and an inert shielding gas source, in which the welding assembly additionally includes the following: an electrically coupled welding gun 1 with a handle 2 having first and second ends, as well as various cross-sectional shapes over its length in the longitudinal direction, but also having increasing cross-sectional area from a location (arbitrary) between the respective first and second handle ends, a trigger (switch) secured to the handle, and a welding cable secured to the handle that has a gripping portion capable of being held in a variety of orientations with respect to trigger position (abstract; column 1, lines 38-67; column 2, lines 1-30 and 66-67; column 3, lines 1-67; column 4, lines 1-67; column 5, lines 1-16; and Figures 1-8).

5. Claims 5, 6, 8, and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones (US 2,104,750).

Jones discloses a welding apparatus having a substantially straight handle portion coupled to a cable that is coupleable to an electrical power source and a renewable contact member, or wire feeder (Figure 1), such the handle 10 has first and second ends, as well as various cross-sectional shapes over its length in the longitudinal direction, but also having increasing cross-sectional area between the respective first and second handle ends, with respect to the approximate middle of the gripping portion of the handle (column 1, lines 15-21; column 2, lines 1-55; column 3, lines 1-49; and Figures 1, 2, 4, and 5).

6. Claims 24-26 and 34-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Wakeman (US 2003/0015510).

Wakeman discloses a welding gun configured for both arc (MIG) welding (having a shielding gas) and submerged arc welding (having a flux supply), in which the welding system additionally includes a power source, a wire feeder, a welding cable 30 electrically coupled to the power source, and a welding gun assembly 28 with a neck 92, a trigger 40 (switch) on a handle assembly 38 having various cross-sectional shapes over its length in the longitudinal direction, with the handle assembly 38 (gripping portion) being further comprised of two handle pieces (82,84) that increase in cross-sectional area between their respective first and second handle ends, and further including a gripping portion capable of being held in a variety of orientations with respect to trigger position (abstract; paragraphs [0002]-[0015] and [0024]-[0041]; and Figures 1-6).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Allowable Subject Matter

7. Claims 1-4, 9-15, and 27-33 are allowed.

8. Claims 7 and 20-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: claims 27-33 are allowable for the same reasons set forth in paragraph 6 of the prior Office Action, while the reasons for indicating allowable subject matter for the remaining claims are as follows: 1) a welding system that includes a handle with first and second recesses, such that the first and second recesses are operable to receive a (same/multi-faceted) member secured to a cable in first and second directions relative to the handle, with the second direction being opposite to the first direction (independent claims 1 and 9); 2) a welding system that includes a welding handle (with first and second ends) with a gripping portion that increases in cross-sectional area from a location between the first and second ends in each direction to approximately the first and second ends, such that each end of the welding cable is operable to receive the welding cable (dependent claim 7); 3) a handle for a welding system that includes a gripping portion between its first and second ends, such that the handle increases in cross-sectional area in each direction from a location approximately midpoint of the gripping portion to the first and second ends, such that the handle has the specified perimeter length or handle length (dependent claims 20, 21, and 23).

Response to Arguments

10. The examiner acknowledges the applicant's amendment received by the USPTO on January 5, 2004. The applicant's amendment overcomes a prior objection to claim 35. However, a new rejection under 35 USC 112, 2nd paragraph, has been necessitated by amendment to claim 19 (see paragraph 2 above). Another 35 USC 102(b) rejection has been necessitated by amendment (see paragraph 5 above). Additional allowable claims are also indicated in the above paragraphs 7-9. Claims 1-36 remain under consideration in the application.

11. Applicant's arguments with respect to claims 5, 6, 8, and 16-19 have been considered but are moot in view of the new ground(s) of rejection.

12. Applicant's arguments (regarding claims 24-26 and 34-36) filed January 5, 2004 have been fully considered but they are not persuasive.

With regard to the applicant's arguments on pages 10-16 of the amendment, the examiner respectfully disagrees with the applicant's assessments of Colangelo, Jr. and Wakeman. For claims 24 and 25, both references include the limitation "each receiving portion" (e.g. holes at the opposite ends of the handle that are "adapted to" or "capable of" receiving welding cable from opposite directions). For claim 26, both references include the limitation "gripping portion is adapted to cooperate with a corresponding welding handle piece to increase cross-sectional area of the handle...", such that this limitation would be interpreted as a "assembly" of the handle pieces to increase cross-

section. For claims 34-36, both references include respective handle portions that are capable of being gripped in a wide variety of orientations (e.g. fingers, thumb, palm), such that the functional language in the last limitation of the claims would be met (individually) by both references.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Kevin P. Kerns whose telephone number is (571) 272-1178. The examiner can normally be reached on Monday-Friday from 8:00am-5:00pm.

Art Unit: 1725

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin P. Kerns
Examiner
Art Unit 1725

KPK
kpk
February 3, 2004

Kiley Stoner AU 1725
Kiley Stoner 2/4/04